(1978) 09 MAD CK 0030

In the Madras High Court

Case No : Writ Petition No. 3341 of 1978

Bheru Industries APPELLANT

Vs

The Government of India RESPONDENT

Date of Decision : 19-09-1978

Acts Referred:

Citation : (1979) CENCUS 140

Hon'ble Judges : V. Ramaswami, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V. Ramaswami, J.—This writ petition coming on for orders as to admission on this day upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr. K.C. Rajappa, Advocate for the Petitioner the Court made the following Order:

2. The petitioner was issued import licence for importing cellulose nitrite films in SI. No. 101/D/V ITC Policy, Vol I. During the period from 30-4-1973 to 27-11-1974, they imported certain consignments of cellulose nitrite films and duty was levied under item 82(3) of the Indian Customs Tariff at the rate of 100% plus 20% with an additional duty at the rate of 40%. The petitioner paid the duty, cleared the goods and then filed a petition for refund of duties contending that the goods should have been assessed to duty at the rate of 60% plus 15% ad valorem as per the Government of India, Ministry of Finance, Notification No. 65 Customs dated 30 4 1973. It was alternatively contended that item No. 82(3) of the Indian Customs Tariff was not applicable and that the goods should be assessed under item 87 without countervailing duty. This contention was rejected by the Assistant Collector by his order dated 1-2-1975 holding that the duty was properly and legally levied. The petitioner filed an appeal against this order of the Assistant Collector to the Appellate Collector of Customs who also dismissed the appeal. This was on the ground that the goods imported by the petitioner is cellulose nitrite films and not cellulose nitrite sheets

which alone were covered by the original notification dated 30-4-1973, which was in force at the time of import, and that cellulose nitrite films and cellulose nitrite sheets have separate existence and are known as such differently in the trade and technical practice. The petitioner along with number of others filed revision petitions to the Government of India against these orders. The Government of India by its order dated 24th November, 1976 observed:

The product imported by the petitioners are within the range of thickness for films as defined in the ISI specifications The view that films and sheets are different from one another is also strengthened by the need to amend the earlier notification by notification No. 86 dated 27-11-1974; the later brought in the words ''cellulose nitrite films'' in addition to ''cellulose nitrite sheet'' occurring in the Notification No. 65 dated 30.4.1973. This amendment is effective from the date of notification. The films imported are rectangular in shape The petitioners'' contention that the impugned goods do not fall within the definition of ''rectangular profile'' cannot be correct.

In view of these observations, the revision petitions were dismissed holding that the duty was properly levied. In spite of the fact that the petition was dismissed as early as 24.11.1976 the petitioner did not question that order till 30th August 1978 when this writ petition was filed. I cannot go into that question in this writ petition as it is more on a question of fact, namely, whether the imported goods are rectangular in shape or whether they are cellulose nitrite films within the meaning of the notification or sheets. Further the petitions were disposed of as early as in 1976 but this writ petition was filed only on 30th August 1978. The petitioner contended that though the order is dated 24.11.1976, the order was not served on him till 9.6.1977 and only after he was served on 9.6.1977 he could file this petition- Even then the writ petition filed on 30.8.78 is delayed by more than 131/2 months. Therefore, the writ petition is liable to be dismissed on the ground of laches as well. The order of the Government is on a petition filed by the petitioner and in the face of that position, the petitioner should have questioned that order if they are aggrieved by the order. The writ petition came up for orders on 13.9.1978 when this Court raised the question of delay as also the petitioner who is a resident of Bangalore filing a writ petition against the Central Government in this Court Today the learned Counsel for the petitioner cited the decisions reported in State of Madhya Pradesh Vs. Bhailal Bhai and Others, . Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, and Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, contending that they are directly in point on the question of delay. I consider that they are quite irrelevant. In those cases, there was already an adjudication that the levy is illegal or there was admittedly over-levy of duty and the only question for consideration was whether the Government could be directed to refund the money when there is admitted excess levy. In this case the Government of India found that the levy of duty was in order. Therefore, before contending that the decisions are applicable to this case, the first hurdle for the petitioner is to get over the finding of the Government of India that the levy was proper and to show that any excess was levied other than what was legally leviable. The above decisions have therefore no application to the facts of this case. The petitioner could not cite any other decision which supports him on the ground of delay or his right to file writ petition in his Court. Thus both on merits! as also on the grounds of delay and maintain ability this petition is liable to be dismissed Accordingly it is dismissed.

